



City of Milpitas
NOTICE TO CONTRACTORS

INVITATION FOR BID

Public Access Studio
IFB 3397

NOTICE IS HEREBY given that sealed bids will be received by the City of Milpitas Purchasing Division until June 15, 2006 by 2:00 PM local time, at which time and place they will be publicly opened and read for furnishing all labor, materials and equipment, and performing all work necessary and incidental to:

construct a Public Access Television Studio in an existing City Hall storage room

according to City of Milpitas plans, specifications and contract documents.

Bids shall be delivered and addressed to the City of Milpitas Purchasing Agent, 455 E. Calaveras Blvd., California, 95035-5411, and shall be labeled "Public Access Studio, Bid No. IFB 3397". Any Bidder who wishes its bid to be considered is responsible for making certain that its bid is received at the **Information Counter located in the lobby of the first floor of City Hall at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411** by the proper time. No oral, telegraphic, electronic, facsimile or telephonic bids or modifications will be considered unless specified. Bids received after the scheduled bid opening time will be returned unopened.

Plans and Specifications. Specifications may be examined and obtained at no charge at the Purchasing Office, or by calling 408-586-3160.

Pre-Bid Conference. A **mandatory** pre-bid conference will be held at **10:00 AM on June 9, 2006 at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411**. Bidders who are unable to attend the pre-bid conference must call the Purchasing Agent at least 2 days before the bid opening date.

Contractors License. All Bidders shall be licensed under the provisions of Chapter 9, Division 3 of the Business and Professions Code of the State of California to do the type of work contemplated in the project. The Successful Bidder shall possess a valid Contractor's License issued by the Contractor's State License Board at the time the contract is awarded. The class of license shall be **(A)** or any other classification applicable to the work specified in the contract. Each bidder shall also have no less than **(5) of years of experience** in the magnitude and character of the work bid.

Prevailing Wages. Pursuant to provisions of Section 1770, et seq., of the Labor Code of the State of California, it shall be mandatory upon the Contractor to pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations. In addition, the Contractor shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentices on public works contracts.

Bid Security Bond. Each Bid shall be accompanied by a certified check, cashier's check, or Bid bond duly completed on the form provided herewith by a guaranty company authorized to carry on business in the State of California, in an amount equal to at least ten percent (10%) of the sum of the total amount bid, including any options. Said bond is payable without condition to the City of Milpitas as a guaranty that the bidder, if awarded the contract, will promptly execute the contract in

accordance with the Bid in manner and form required by these contract documents and will furnish. The Bid Security shall be forfeited to the City of Milpitas as liquidated damages in the case of failure or neglect of the bidder to furnish, execute and deliver to the City of Milpitas the required performance bond, payment bond and evidences of insurance, and to enter into, execute and deliver to the City of Milpitas the contract on the form provided herewith, within ten (10) days after being notified in writing by the City of Milpitas that the award has been made and the contract is ready for execution.

Payment Bond. Pursuant to Civil Code 3247, for work involving an expenditure of greater than \$25,000 the Successful Bidder will be required to furnish a Payment Bond in an amount equal to one hundred percent (100%) of the total amount of the contract before commencement of work and conforming to the contract documents.

Substitution of Securities. The Contractor shall be permitted to substitute securities for any monies withheld by the City of Milpitas to ensure performance under this contract, such substitution to be subject to the limitations and requirements of Public Contract Code Section Part 5, SS 22300.

Signature
Purchasing Agent

Published: Milpitas Post
May 25, 2006
June 1, 2006

SCOPE OF WORK

The City seeks to construct a Public Access Studio in an existing storage room at the Milpitas City Hall located at 455 E. Calaveras Blvd., Milpitas, CA 95035.

The work shall include but is not limited to the following:

- Draft working drawings, engineer, layout, install, furnish all labor, materials, apparatus, transportation, temporary construction, and any and all special services as required for the installation of a Public Access Studio.
- The owner has established the basic design program. The contractor will then complete the design and become the Designer of Record. Working drawings must be submitted for approval to the Building Department.
- Obtain a permit from the City of Milpitas Building Department including payment of all required fees for the permit and required inspections.
- Comply with all ordinances, codes and regulations of civil authorities, requirements from the Information Services Department having jurisdiction at the jobsite and related to the type of work specified under this Contract.
- Comply with all safety requirements and standards of the industry for all construction work, and comply with all manufacturers' recommendations for product installation.

WORK BY OTHERS:

PROJECT RESTRICTIONS:

- A. The jobsite is inside a high security and heavily used City Hall that is accessible to the general public between 8:00a.m. and 5:00p.m.. All personnel working the site will be required to physically sign in and out of the facility.
- B. Contractor shall supervise and coordinate all work and all subcontractors.
- C. Limited or restricted access to the facility may be implemented.
- D. Contractor Vehicle parking shall be in the North West parking lot of City Hall.

CONTRACTOR'S DUTIES:

Except as otherwise specified, the Contractor shall furnish the following to the full extent as required by the Contract: Labor, superintendence, products, construction equipment, construction materials and appurtenances as necessary. Utilities required for construction and related activities, facilities and services necessary to properly execute and complete the Work.

CONTRACTOR USE OF WORKSITE:

Confine Worksite operations to areas permitted by law, ordinances, permits, and the Contract Documents.

Consider the safety of the Work and that of people and property on and adjacent to the Worksite when determining amount, location, movement, and use of materials and equipment on Worksite.

Do not load Worksite with equipment and products that would interfere with the Work or the normal operations of the Milpitas City Hall, the Milpitas Community Center and the Milpitas Library. Only equipment, tools or materials required for this work may be stored at the Worksite.

Access to the Worksite shall be from Milpitas Boulevard or as shown within the Contract Documents. The Contractor shall be responsible for maintaining the access route.

PROJECT PHASING AND WORK SCHEDULE:

The Contractor shall submit a complete and detailed schedule of the work with specific milestones for the design, procurement, installation and completion of the Public Access Studio.

MAINTENANCE OF ACCESS AND PUBLIC COORDINATION

MAINTENANCE OF ACCESS:

Vehicular access shall be maintained at all times to the City Hall, Community Center and the Milpitas Library.

ADVANCE PUBLIC NOTIFICATION:

The Contractor shall also contact the following parties listed below 48-hours prior to planned construction activities.

No	<u>Agency</u>	Telephone Number
1	Terry Medina/Assistant Information Services Director	(408) 586-2703
2	Eliren Pasion/Public Information Specialist	(408) 586-2730

The Contractor shall provide the City with written proof of notification of the parties listed above by listing all parties contacted, the names of those contacted, and the dates the contacts were made.

PUBLIC ACCESS STUDIO GENERAL REQUIREMENTS

DESCRIPTION:

The area of construction is located in City Hall next to the 1st Floor Electrical Room located on the North Side of the Building. The room is approximately 310 square feet with a dropped acoustical tile ceiling, sheetrock walls and tile floor. The room is currently being used for the storage of tables

and chairs. Access to the room is through a locked door off of the City Hall Rotunda or through a card access controlled exterior door. There are 2 restrooms adjacent to the facility.

A. This Section describes the requirements for designing and building the following:

1. Creation of a Control/Production Room of approximately 130 square feet.
2. Creation of a Studio Room of approximately 180 square feet.
3. Associated carpentry work including:
 - Installation of a 2" x 4" metal stud wall approximately 13 feet in length;
 - Installation of acoustic insulation;
 - Installation of two layers of sheetrock on both sides of the wall of the Studio Room;
 - Installation of a 3'0" x 3'0" double pane window between the Control/Production Room and the Studio Room;
 - Installation of a 3'0" door (with Pemko Seal) between the Control/Production Room and the Studio Room;
 - Taping and texture to match existing walls;
 - Paint color to be determined by owner.
4. Associated electrical work including:

Control/Production Room

- Installation of 2 new 20amp dedicated circuits in the Control/Production Room;
- Installation of 5 new plug outlets in the Control/Production Room;
- Installation of 2 sets of track lights in the Control/Production Room;
- Installation of a 3 way light switch for the Control/Production Room controlling the recessed lights in the Studio Room;
- Installation of a low voltage dimmer switch controlling the track lights in the Control/Production Room;
- Installation of a low voltage "On Air" indicator on the North Wall of the Studio Room;
- Installation of 3-2" conduits from a recessed access box (12"x12"x4") stubbed into the new dropped ceiling on the North wall of the Studio Room;
- Install voice and data outlet in the Control/Production Room.

Studio Room

- Installation of 7 new plug outlets in the Studio Room (including 5 ceiling mounted outlets and 2 wall mounted outlets);
- Installation of a 3 way light switch in the Studio Room controlling the recessed lights in the Studio Room;
- Installation of 4 recessed lights in the Studio Room;
- Installation of 3-1 1/2" conduits from the location of the AV Rack Equipment into a recessed access box (12"x12"x4") on the new wall;
- Installation of 3-1 1/2" conduits from the location of the AV Rack Equipment into a recessed access box (12"x12"x4") location on the adjacent wall towards the Committee Room;

- Installation of 3-1 1/2" conduits from the location of the AV Rack Equipment into a recessed access box (12"x12"x4") location on the wall opposite of the Committee Room;
 - Installation of a low voltage "On Air" indicator on the South Wall near the door opening into the Rotunda.
5. Remove existing acoustical tile 2' x 2' ceiling grid.
 6. Install new 2' x 2' grid using a black heavy-duty grid system.
 7. Install new black 2" acoustical tiles (decibel rating). The ceiling tiles should be the flush style, not the drop-down-style that hangs below the grid.
 8. Install new vinyl sheet goods (color and style to be determined by owner) over the existing 12" x 12" tile floor.
 9. Install a double theatrical curtain rail to support 2 sets of theatre curtains hanging from the ceiling.
 10. Relocate existing air ducts in the Control/Production Room.
 11. Associated Fire Sprinkler work (movement of 1 sprinkler head approximately 3 feet from its current position).
 12. Associated Fire Alarm work (Testing of the system upon completion).
 13. Associated caulking and sealing (sound dampening around all entrances to the Studio Room using a Pemko seal).

SUBMITTALS:

- A. Provide an "as-built" drawing(s) of the new Control/Production Room and the Studio Room.
- B. Provide Electrical Panel Modifications.
- C. Provide Fire Sprinkler Modification.
- D. Provide HVAC Modification.

QUALITY ASSURANCE:

- A. Contractor must have a minimum of five years of relevant experience in commercial work including a working knowledge of noise reduction techniques as it relates to television/radio studios.
- B. Contractor shall ensure that all Electrical Equipment shall carry UL (or ETL) approval and comply with applicable standards of the National Electrical Code.
- C. Contractor shall coordinate with the Milpitas Fire Department in regards to the relocation of one Fire Sprinkler Head and shall test and obtain approval from the City of Milpitas Fire Department upon completion.

- D. Contractor shall ensure that all inspections that occur during and upon completion of construction, are accepted by the City Building and Fire Inspectors.
- E. Contractor shall bear in mind that the construction of the Public Access Studio is being performed in a Public Building with residents and visitors conducting business throughout the day. Contractor shall use as much restraint as possible to ensure a quiet, safe environment during the course of the project.
- F. Contractor shall comply with all ordinances, codes and regulations of civil authorities having jurisdiction at the jobsite.

MEASUREMENT AND PAYMENT:

The contract lump sum price paid for “Public Access Studio” shall include full compensation for furnishing all labor and materials, tools, equipment and incidentals, and for performing the work involved in the building of a Public Access Studio, including as built drawings and all required permits, miscellaneous carpentry, electrical, HVAC, fire sprinkler, acoustical ceiling grid and tile, sheetrock, taping and texture, painting and vinyl floor covering, as provided in all sections of these specifications, complete and in place and suitable for its intended purpose and to the satisfaction of the City of Milpitas. No additional compensation will be allowed therefore.

INSTRUCTIONS TO BIDDER

ACCESSIBILITY. The Contractor shall fully inform himself regarding any peculiarities and limitations of the spaces available for the performance of work under this contract. He shall exercise due and particular caution to determine that all parts of his work are made quickly and easily accessible.

ADDENDA ACKNOWLEDGMENT. Each bid shall include specific acknowledgment in the space provided of receipt of all addenda issued during the bidding period. Failure to so acknowledge may result in the bid being rejected as not responsive.

AUTHORIZED SIGNATURES. Every bid must be signed by the person or persons legally authorized to bind the Bidder to a contract for the execution of the work. Upon request of the City of Milpitas, any agent submitting a bid on behalf of a Bidder shall provide a current power of attorney certifying the agent's authority to bind the Bidder. If an individual makes the bid, his or her name, signature, and post office address must be shown. If a firm or partnership makes the bid, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the bid, the bid shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City of Milpitas, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the bid to execute contracts on behalf of the corporation.

AWARD OF BID

Bid award will be made to the lowest responsible and responsive bidder. The low bidder will be determined by the lowest responsible bid for the Total Base Bid that complies with all the requirements prescribed in the bid/contract documents. In the event the lowest responsive and responsible bid for a construction project exceeds available funds, and such bid does not exceed such funds by more than [five] percent, the City of Milpitas reserves the right, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids. Additionally, the City of Milpitas reserves the right to reject any or all bids.

BID ACCEPTANCE PERIOD. Unless otherwise specified herein, prices are firm for a period of ninety (90) days.

BID FORMS. Bids shall be made on the blank forms prepared and provided by the City of Milpitas. Bids shall give the prices proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the bidder or authorized representative, with the appropriate address. If an individual makes the bid, his or her name, signature, and post office address must be shown. If a firm or partnership makes the bid, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the bid, the bid shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation, and the title of the person who signs on behalf of the corporation. If the corporation makes the bid, a certified copy of the bylaws or resolution

of the board of directors of the corporation shall be furnished showing the authority of the officer signing the Bid to execute contracts on behalf of the corporation.

BID RESULTS. It is not the policy of the City of Milpitas to provide bid results in response to telephone inquiries. Bids are opened publicly and interested parties are invited to attend. A tabulation of bids received is posted on the Purchasing page of the City website.

BID SUBMITTAL. Bids shall be submitted in a sealed envelope bearing on the outside the name of the bidder, his address and the project name and bid number for which the bid is submitted. Bidder's authorized representative must properly initial any erasures or alterations of any kind. Bids that contain omissions or improper erasures or irregularities may be rejected. No oral, electronic, telegraphic, or telephonic bids or modifications will be considered unless otherwise specified herein.

BID WITHDRAWAL. Bidder's authorized representative may withdraw bids only by written request received before Bid Opening.

BIDDER AGREEMENT TO TERMS AND CONDITIONS. Submission of a signed bid will be interpreted to mean bidder has agreed to all the terms and conditions set forth in the pages of this bid.

BUSINESS LICENSE. If the scope of work under this bid includes performing services or installation on City of Milpitas property, the SUCCESSFUL BIDDER must obtain a City of Milpitas Business License upon execution of the contract.

CANCELLATION OF SOLICITATION. The City of Milpitas may cancel this solicitation at any time.

CLEANUP COST. Bidder shall include in the bid, all costs for cleanup during performance and upon completion of work on this project. Successful Bidder will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Successful Bidder shall leave entire area in a neat, clean, and acceptable condition as approved by the City of Milpitas.

COMPLIANCE WITH OR DEVIATION FROM SPECIFICATIONS. Bidder hereby agrees that the material, equipment or service offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the bidder's response. Bidder may submit an attachment entitled "Exceptions to Specifications", which must be signed by bidder's authorized representative. An explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken. Bids failing to comply with this requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but may not be a substitution for this requirement.

COMPLIANCE WITH FAIR EMPLOYMENT PRACTICE ACT. Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract, or any subcontract hereunder, no Contractor, material supplier or vendor shall, by reason of race, color, national origin or ancestry, or religion, discriminate against any person who is qualified and available to perform the work to which such employment relates.

COMPLIANCE WITH LAWS. All bids shall comply with current federal, state, local and other laws relative thereto.

CONTRACT DOCUMENTS, EXAMINATION OF. It is the responsibility of the Bidder to carefully thoroughly examine and be familiar with legal and procedural documents, general conditions, all bid forms, specifications, drawings, plans, and addenda (if any), hereinafter referred to as Contract Documents. Bidder shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, equipment and appurtenances necessary to perform the work as specified by the Contract Documents. The failure or neglect of the Bidder to examine the Contract Documents shall in no way relieve him from any obligations with respect to the bid or contract. The submission of a bid shall constitute an acknowledgment upon which the City of Milpitas may rely that the bidder has thoroughly examined and is familiar with the contract documents. The failure or neglect of a bidder to receive or examine any of the contract documents shall in no way relieve the bidder from any obligations with respect to the bid. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any bid document.

CONTRACTOR'S LICENSE. At the time of award, the Successful Bidder must possess a valid California Contractor's License issued by the Contractor's State License Board for the classification(s) of work specified in the contract documents. Bidders must show their contractor's license number, classification and expiration date on their bid

DEADLINE, BID SUBMITTAL. Bidders shall submit their bids by the "Bid Submittal Deadline". The "Bid Submittal Deadline", is shown on the Notice to Contractors form. The receiving time at the Information Counter located in the lobby of the first floor of City Hall at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411 will be the governing time for receipt of bids. Bids will not be opened or revealed before the time set for receipt.

DISQUALIFICATION OF BIDDER. If there is reason to believe that collusion exists among the bidders, the City of Milpitas may refuse to consider bids from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one bid for the same work unless alternate bids are called for. A person, firm, or corporation who has submitted a sub-Bid to a bidder, or who has quoted prices on materials to a bidder, is not thereby disqualified from submitting a sub-Bid or quoting prices to other bidders. Reasonable ground for believing that any bidder is interested in more than one Bid for the same work will cause the rejection of all Bids for the work in which a bidder is interested. If there is reason to believe that collusion exists among the bidders, the City of Milpitas may refuse to consider Bids from participants in such collusion. Bidders shall submit as part of their Bid documents the completed Non-Collusion Affidavit provided herein.

DOCUMENTS TO BE RETURNED WITH BID. Failure to completely execute and submit the required documents before the date and time set for bid opening, may render a bid non-responsive. The documents that must be returned by bid opening time are listed on the form entitled "Bid Documents To Be Returned" and attached hereto.

ESCROW IN LIEU OF RETENTION. In the event the Contractor wishes to choose this option, the Contractor shall enter into an escrow agreement with the City of Milpitas. The escrow agent shall be a qualified bank approved by the City of Milpitas. The costs of such escrow account shall be equivalent in fair market value to the amount to be withheld as performance retention. The securities shall be held in accordance with the provisions of Public Contract Code Section 22300,

and the implementing agreement. The Contractor is obligated to ensure that such securities deposited are sufficient to maintain, in total fair market value, an amount equal to the cash amount of the sums to be withheld under the contract. If the City of Milpitas Finance Director, or the appropriate escrow agent, gives written notice to the Contractor indicating that the fair market value of the securities has dropped below the dollar amount of monies to be withheld by the City of Milpitas to ensure performance, Contractor shall within five days of the date of such notice post all such securities held by the City of Milpitas, or in escrow, equivalent to the amount of money to be withheld by the City of Milpitas under the contract. Any Contractor wishing to exercise this option shall give notice in writing to the City of Milpitas.

EXECUTION OF CONTRACT. Time is of the essence of this contract. The Successful Bidder/Contractor shall execute the contract, including but not limited to signing all necessary documents and submitting all required bonds and evidences of insurance, within ten (10) days after personal delivery of the notice within fifteen (15) days after such notice has been deposited in the United States mail. One copy of the contract will be returned to the Contractor after the City of Milpitas executes the contract. In case of failure of the Contractor to execute and return the contract and all required documents within the time allowed, the City of Milpitas may, at its option, consider that the bidder has abandoned the contract, in which case the bid security bond shall be forfeited by the bidder and become the property of the City of Milpitas. After the contract has been executed, including the insurance documents, certificates, and bonds a Notice to Proceed will be issued. Bidder agrees to commence work within ten- (10) working days after the date of the Notice to Proceed, to proceed with the work and fully complete the project within (number of completion days allowed) from the date of the Notice to Proceed.

EXPERIENCE AND COMPETENCY. The Successful Bidder shall be skilled and regularly engaged in the general class or type of work called for under the contract. The Successful Bidder shall also have no less than **five (5)** years' experience in the magnitude and character of the work bid. Each Bidder shall set forth his experience on the form entitled Bidder's Experience and submit it with his bid. It is the intention of the City of Milpitas to award a contract to a Bidder who furnishes satisfactory evidence that he/she has the requisite experience, ability, sufficient capital, and facilities to enable him to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the Bidder, the City of Milpitas will weigh any evidence that the Bidder has performed satisfactorily other contracts of like nature, magnitude, and comparable difficulty and comparable rates of progress. In selecting the lowest responsive and responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the work specified in the contract documents.

FIRM PRICE PERIOD. Bidders' bids shall remain open and firm for a period of not less than ninety-(90) calendar days from the date of the bid opening.

FORMATION OF CONTRACT. Bidder's signed bid and City of Milpitas' written acceptance shall constitute a binding contract.

INDEPENDENT CONTRACTOR. Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any

financial interest under this contract is an officer or employee of the City of Milpitas. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent Contractors and not agents of the City of Milpitas.

INFORMED BIDDER. Bidders are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the bidders' own risk and they cannot secure relief on the plea of error.

INK OR TYPEWRITTEN. All information, prices, notations, signatures, and corrections must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person signing the Bid.

INSURANCE REQUIREMENTS. Successful Bidder shall acquire and maintain at his/her own expense all insurance described in the "**Attachment A Insurance Requirements**". All insurance shall remain in full force and effect until final project completion and acceptance, as determined by the City of Milpitas. Within ten (10) calendar days of award of contract, Successful Bidder must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified and with an endorsement naming the City of Milpitas, its officers, and agents, Additional Insured. Failure to furnish the required certificates and endorsements within the time allowed will result in withdrawal of award and forfeiture of the Bidder's Bid Security.

INTERPRETATION OF CONTRACT DOCUMENTS. If any person is in doubt as to the true meaning of any part of the specifications or other contract documents, or finds discrepancies or omissions in the specifications, he may submit to the City of Milpitas a written request for an interpretation or correction. Requests for interpretations shall be made in writing and delivered to the Purchasing Office at the City of Milpitas by mail at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411, or by facsimile to 408-586-3170 at least ten (10) days before the time announced for opening the bids. The requesting party is responsible for prompt delivery of any requests. When the City of Milpitas considers interpretations necessary, interpretations will be in the form of an addendum to the contract documents, and when issued, will be sent as promptly as is practical to all parties recorded by the City of Milpitas as having received contract documents. All such addenda shall become a part of the contract. Oral and other interpretations or clarifications shall be without legal or contractual effect. It is the responsibility of each bidder to ensure the City of Milpitas has their correct business name and address on file. Any prospective bidder who obtained a set of contract documents from anyone other than the City of Milpitas is responsible for advising the City of Milpitas that they have a set of contract documents and wish to receive subsequent Addenda.

LATE BIDS. Late bids will not be considered and will be returned to bidders unopened. It is the bidders' responsibility to ensure that their bids have sufficient time to be received by the Purchasing Office before bid opening.

MEASUREMENTS. It is the responsibility of the Bidder to make all measurements to determine his bid price. The City of Milpitas will not be responsible for determining the quantities of materials necessary to complete the work specified.

MODIFICATION OF BIDS. Any Bidder who wishes to make modifications to a bid already received by the City of Milpitas must withdraw his bid in order to make the modifications. Withdrawals must be made in accordance with the terms and conditions of this solicitation (see Withdrawal of Bids). All

modifications must be made in ink, properly initialed by bidder's authorized representative, executed, and submitted in the same form and manner as the original bid. It is the responsibility of the bidder to ensure that modified or withdrawn bids are resubmitted before the time announced for the opening of bids.

NOMENCLATURES. The terms Successful Bidder, supplier, vendor, or contractor may be used interchangeably in these specifications and shall refer exclusively to the firm with whom the City of Milpitas enters into a contract because of this solicitation.

NON-COLLUSION AFFIDAVIT. Bidders are required to submit a Non-Collusion Affidavit with their bids. See attached Affidavit.

OFFERS OF MORE THAN ONE PRICE. Bidders are NOT allowed to submit more than one bid.

OPENING OF BIDS. All bids, irrespective of irregularities or informalities, will be opened and publicly read aloud at the time announced for the opening of bids. All interested persons are invited to be present at the opening and reading of bids. The public reading will include the names of the bidders, the total amounts bid and the acknowledgment of receipt of bid guaranties. Postponement of Opening. The City of Milpitas reserves the right to postpone the date and time for opening of bids at any time before the date and time announced in the Notice to Contractor.

PAYMENT BOND (Labor & Materials). Pursuant to Civil Code 3247, for work involving an expenditure of greater than \$25,000 the Successful Bidder shall furnish a Payment Bond in an amount equal to one hundred percent of the total amount of the contract prior to commencement of work and conforming to the contract documents. Successful Bidder shall furnish within ten (10) consecutive days after written Notice of Award, a Payment Bond in an amount equal to one hundred percent (100%) of the total amount of the contract. Said bond shall be secured from a surety company acceptable to the City of Milpitas and authorized or licensed by the State of California.

PAYMENT TERMS. Discounts for payments made within **(number of days)** days or more from receipt of invoice will be considered in award of bid. Payment discounts must be clearly shown on the Bid Form.

PERMITS. Unless otherwise provided herein, Contractor shall at his expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of the contract, and shall give all public notices necessary for the lawful performance of the contract. Upon execution of the contract, the Successful Bidder/Contractor shall obtain a building permit issued by the City of Milpitas.

PREVAILING WAGES. It shall be mandatory upon the Contractor to whom the contract is awarded to pay not less than the said prevailing rates of wages to all workers employed by him in the execution of the contract. Pursuant to provisions of Section 1770, et seq., of the Labor Code of the State of California, the Contractor shall pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations. In addition, the Contractor shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentices on public works contracts. In accordance with the provisions of section 1773.2 of the Labor Code of the State of California, the Director of Industrial Relations has determined the general prevailing rates of wages and employer payments for health, welfare, vacation, pensions and similar purposes applicable, which is on file in the City of Milpitas Public Works office. The Contractor shall post a copy of these prevailing wage rates at the site of the

project. The provisions of Article 2 and 3, Division 2, Chapter 1 of the Labor Code, State of California, are made by this reference a part of this solicitation.

PRICE DISCREPANCIES. In the event that there are unit price items in a bid schedule and the "amount" indicated for a unit price of a bid item does not equal the product of the unit price and quantity listed, the unit price shall govern and the amount will be corrected accordingly. The Contractor will be bound by said corrections, subject to the provisions of Section 5100 et seq. of the California Public Contract Code. If there is more than one bid item in a bid schedule, and the total indicated for the schedule does not agree with the sum of prices of the individual bid items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly. The Contractor will be bound by said corrections, subject to the provisions of Section 5100 et seq. of the California Public Contract Code.

PRICES. All bids shall give the prices proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Bidder's authorized representative. Bid prices shall include everything necessary for the completion of construction and fulfillment of the contract including but not limited to furnishing all materials, equipment, tools, facilities and all management, superintendence, labor, services, taxes, licenses and permits required to complete the work in accordance with the contract documents, except as may be provided otherwise in the contract documents. The work and the bid price shall also include providing the necessary safety precautions such as barricades, warning signs for protection of the public and any necessary "cleanup" that is required to restore the work site to a satisfactory condition. Any items shown on the plans or details or described in the specifications that are not specifically listed in the bid item are to be considered included in the bid item and no additional or special compensation will be allowed. In the event that there is more than one bid item in the bid schedule, the Bidder shall furnish a price for all bid items in the schedule, and failure to do so will render the bid as non-responsive and may cause its rejection. The total amount of the bid will be the sum of the total prices of all items in the bid schedule. The total amount of the bid will be the sum of the total prices of all items in the bid schedule. The total price of unit price items will be the product of the unit price and estimated quantity of the item. In case of discrepancy between the unit price and total price of an item, the unit price shall prevail if the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the amount set forth as the total price by the estimated quantity of the item.

PROTECTION OF PUBLIC. Adequate warning devices, barricades, guards, flagmen or other necessary precautions shall be taken by the Contractor to give advised and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area.

QUALIFICATION OF BIDDERS. Each bidder shall be skilled and regularly engaged in the general class or type of work called for under the contract. The bidder's experience shall be set forth and submitted on the form provided herewith. It is the intention of the City of Milpitas to award a contract to a bidder who furnishes satisfactory evidence that the bidder has the requisite experience, ability, sufficient capital, facilities, and plant to enable the bidder to prosecute the work successfully and properly, and to complete it within the time specified in the contract. To determine the degree of responsibility to be credited to the bidder, the City of Milpitas will weigh any evidence that the bidder has performed satisfactorily other contracts of like nature, magnitude and comparable difficulty and comparable rates of progress. In selecting the lowest responsive and responsible bidder, consideration will be given not only to the financial standing but also to the general competency of the bidder for the performance of the work covered specified in the contract documents. To this end,

each Bid shall be supported by a statement of the bidder's experience on the form entitled "Bidder's Experience", which is a part of the contract documents.

QUESTIONS. Questions about the bid documents should be made in writing and directed to the Purchasing Agent at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411. General questions may be directed to the Purchasing Office by calling 408-586-3160 or faxing to 408-586-3170.

REJECTION OF BIDS, WAIVER OF INFORMALITIES. The City of Milpitas reserves the right to reject any or all bids or any part of a bid. The City of Milpitas reserves the right to reject the bid of any bidder who previously failed to perform adequately for the City of Milpitas or any other governmental Agency. The City of Milpitas expressly reserves the right to reject the bid of any bidder who is in default on the payment of taxes, licenses, or other monies due the City of Milpitas.

RULES FOR SUBMITTING BIDS.

- A. Bid Submittal Deadline.** The Bid Submittal Deadline is: **June 15, 2006 by 2:00 PM.** Bids must arrive in the Purchasing Office, 455 E. Calaveras Blvd., Milpitas, CA 95035-5411 by the Bid Submittal Deadline.
- a. **Responsibility.** Bidders are solely responsible for ensuring their Bid is received by the City of Milpitas in accordance with the solicitation requirements, before the Bid Submittal Deadline, and at the place specified. The City of Milpitas shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of bid shall be made at the office specified in the Notice to Contractors. Deliveries made before the Date & Time Due but to the wrong City of Milpitas office will be considered non-responsive unless re-delivery is made to the office specified before the Date & Time Due and time specified in the Notice to Contractors.
 - b. **Time for Receipt.** Bids must be received on or before the **Bid Submittal Deadline.** Bids received after the Bid Submittal Deadline will be considered late and will not be considered for award.
 - c. **Extension of Bid Submittal Deadline.** The City of Milpitas reserves the right to extend the Bid Submittal Deadline when it is in the best interest of the City of Milpitas.
 - d. **Facsimile Transmissions.** Bids may be NOT submitted by facsimile.
 - e. **Forms.** To be considered for award, each bid shall be made on forms furnished by the City of Milpitas.
 - f. **Late Bids.** This is an formal solicitation with an formal Date & Time Due. The Date & Time Due it IS FIRM. Bids will NOT be accepted after the Date & Time Due and will be returned to the bidder unopened. **Signature.** To be considered for award, each bid shall be signed by an authorized representative of the bidder.
 - g. **Sealed.** Bids may be submitted by hand, by courier, or any other method specified herein. Bids MUST BE submitted in a sealed envelope.

SELL OR ASSIGN. The successful bidder shall not have the right to sell, assign, or transfer any rights or duties under this contract without the specific written consent of the City of Milpitas.

SEVERABILITY. If any provision, or any portion of any provision, of any contract resulting from this bid shall be held invalid, illegal, or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

SPECIFICATIONS & SITE OF WORK, INSPECTION OF. It is the responsibility of the Bidder to carefully and personally examine the specifications and site of the proposed work, access to the

work, aboveground and underground utilities, buildings, structures or other improvements that may be within the limits of the work or adjacent to the work and which may or may not be shown on the plans, public safety and traffic requirements. Bidders are required to inspect the site of work in order to judge for themselves, by personal examination or by such other means, as they may prefer, of the location and as to the actual conditions of and at the site of work and the proposed work and the nature and extent of the work to be done. If, during the course of the site inspection a bidder finds facts or conditions which appear to conflict with the letter or spirit of the contract documents, or with any other furnished data, the bidder may apply to the City of Milpitas for additional information and explanation before submitting a bid. The plans for the work show conditions as they are supposed or believed by the City of Milpitas to exist, but the conditions shown on the plans do not constitute a representation by the City of Milpitas that those conditions actually exist. Neither the City of Milpitas nor its consultants, officers, employees or agents shall be liable for any loss sustained by the contractor as a result of a variance between conditions shown on the plans and the actual conditions at the site. Above ground and underground utilities, buildings, structures, or other improvements may be within the limits of the work or adjacent thereto; these may or may not be shown on the plans.

Bidders are required to inspect the site of the work in order to satisfy themselves, by examination or by such other means deemed appropriate, of the location of the proposed work and of the actual conditions at the site of work. If a bidder finds facts or conditions that appear to be in conflict with the plans and specifications the bidder may apply to the City of Milpitas, in accordance with these bid documents, for additional information and/or clarification before submitting its bid. However, no such supplemental information or clarification so requested or furnished shall vary the terms of the specifications of the work to be performed unless included in an Addendum to this bid document that is issued by the City of Milpitas. The submission of a bid by a bidder shall constitute the acknowledgment that it has relied and is relying on its own examination of (a) the site of the work, (b) the access to the site and (c) all other data, matter and things requisite to the fulfillment of the work and on its own knowledge of existing services and utilities on and in the vicinity of the site of the work to be construed under the contract, and not on any representations or warranty by the City of Milpitas. No claim will be allowed for additional compensation that is based upon a lack of knowledge of the above items.

SPECIFICATIONS, CHANGES TO. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein or by written amendment. No changes, amendments, or modifications of any of the terms or conditions of the bid specification shall be valid unless reduced to writing and signed by both parties.

SPECIFICATIONS, DEFINITION. The term "specification" or "bid specification" as used in this solicitation shall be interpreted to mean all the pages that make up this bid solicitation, including *but not limited to* the Notice to Contractors, Instructions To Bidder, Terms and Conditions, Detailed Specifications or Scope of Work, Contractor's Bid form, Proposed Equipment & Material Manufacturers form, Experience Statement, Subcontractor's List, Workers Compensation Insurance Certificate, Contractor Guaranty statement and Bid Security Bond.

STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION. Where applicable, all work will be performed in accordance with the City of Milpitas Standard Specifications for Public Works Construction, (2005) or most current edition. Where conflicts arise, the Standards Specifications for Public Works Construction shall prevail.

SUBCONTRACTORS. In accordance with California Public Contract Code Section 4104, each bid shall be listed on the form provided by the City of Milpitas: (a) The type of work to be performed and the name and location of the place of business of each subcontractor who will perform work or labor or render services to the Bidder in or about the construction of the work or improvement; or (b) of any subcontractor licensed by the State of California who, under subcontract to the Bidder, will specially fabricate and install a portion of the work or improvement according to the detailed plans and specifications, in an amount in excess of one-half of one percent of the total amount of the bid; or (c) in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the Bidder's total bid or ten thousand dollars (\$10,000), whichever is greater. For the purpose of this section, a subcontractor is defined as one who contracts with the successful bidder/contractor to furnish materials and labor, or labor only, for the performance of onsite work or who will specially fabricate a portion of the work offsite, pursuant to detailed plans and specifications in the contract documents.

SUBCONTRACTOR COMPETENCY. The Successful Bidder will be required to establish to the satisfaction of the City of Milpitas the competency, reliability and responsibility of the subcontractors proposed to furnish or perform the work described in the contract documents. Before the award of the contract, the City of Milpitas will notify the Bidder in writing if, after due investigation, the City of Milpitas has reasonable objection to any proposed subcontractor. If the City of Milpitas has reasonable objection to any subcontractor the Bidder shall submit an acceptable substitute person to the City of Milpitas. Persons and entities proposed by the bidder to be used as subcontractors, and to whom the City of Milpitas has made no reasonable objection, must be used on the work for which they were proposed and shall not be changed except with the written consent of the City of Milpitas.

SUBCONTRACTOR SUBSTITUTION. The provisions of the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§4100-4113) are incorporated herein by this reference and the City of Milpitas Purchasing Agent is authorized to consent to substitutions as provided therein.

TAXES. Contractor shall pay all federal, state and taxes, levies, duties and assessments of every nature due in connection with any work under the contract and shall indemnify and hold harmless the City of Milpitas from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Bid prices shall include allowance for said taxes.

TERMS OF THE OFFER. City of Milpitas' acceptance of bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City of Milpitas. Bids offering terms other than those shown herein will be declared non-responsive and will not be considered.

WITHDRAWAL OF BIDS. A bidder may withdraw any bid he has submitted at any time prior to the hour set for the closing of the bids provided the request for withdrawal is signed in a manner identical with the Bid being withdrawn. No withdrawal or modification will be permitted after the hour designated for closing of bids.

TERMS AND CONDITIONS

AGREEMENT. Submission of a signed bid will be interpreted to mean bidder hereby agrees to all the terms and conditions set forth in all the pages of this Notice to Contractors/bid solicitation. Bidder's signed bid and City of Milpitas' written acceptance or purchase order shall constitute a contract.

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Except as noted hereunder, Successful Bidder may not assign, transfer or sell any rights or obligations resulting from this bid without first obtaining the specific written consent of the City of Milpitas.

In accordance with Public Contract Code Section 7103.5 "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties. (c) Subdivision (b) shall be included in full in the specifications for the public works contract or in the general provisions incorporated therein and shall be included in full in the public works contract or in the general provisions incorporated therein."

ATTORNEY FEES. In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The City of Milpitas shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

CANCELLATION OF CONTRACT. *Without cause*, the City of Milpitas may cancel this contract at any time with thirty- (30) days written notice to the supplier/contractor. *With cause*, the City of Milpitas may cancel this contract at any time with ten- (10) days written notice to the supplier/contractor. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful bidder may not cancel this contract without prior written consent of the Purchasing Agent.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the Contractor for any extra work as so ordered shall be determined in accordance with the Standard Specification for Public Works Construction, 1998 or most current edition.

CLEANUP. During performance and upon completion of work on this project Contractor will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Contractor shall leave entire area in a neat, clean, and acceptable condition as approved by the City of Milpitas.

CONTRACT INCORPORATION. This contract embodies the entire contract between the City of Milpitas and the Contractor. The complete contract shall include the entire contents of the Notice to Contractors and all pages that make up the bid solicitation, all addenda, all of Bidder's successful submittals, all supplemental agreements, all change orders, all bond(s), and any and all written agreements which alter, amend or extend the contract.

CONTRACTOR, DEFINITION. The term "Contractor" refers to the party entering into a contract with the City of Milpitas as a result of this solicitation.

COOPERATION BETWEEN CONTRACTORS. The City of Milpitas reserves the rights to contract for and perform other or additional work on or near the work covered by these specifications. When separate contracts are let within the limits of any one project, each Contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the City of Milpitas from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same project.

COORDINATION WITH AGENCIES. The Contractor shall coordinate his activities with the proper regulatory agencies and have their representative on site at the proper times.

DAMAGE. The Contractor shall be held responsible for any breakage, loss of the City of Milpitas' equipment or supplies through negligence of the Contractor or his employee while working on the City of Milpitas' premises. The Contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The Contractor shall immediately report to the City of Milpitas any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property to the satisfaction of the City of Milpitas will be a breach of this contract.

FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to Acts of God, war, or acts of public enemy, acts of any governmental agency in its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather.

LAWS - ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS. The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and City of Milpitas Environmental Health Department.

LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Santa Clara, in state of California. The parties further stipulate that the county of Santa Clara, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

PRE-CONSTRUCTION MEETING. The contractor shall not commence work until a meeting between representatives of the contractor and the City of Milpitas is held. The meeting will be held at the City of Milpitas (location), (full address), at a time and date later to be established.

REJECTION OF WORK. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed.

RIGHTS RESERVED. (a) Rejection of Work. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed. (b) Completion of Work. If Contractor fails to comply with the conditions of the contract, or fails to complete the required work or furnish the required materials within the time stipulated, the City of Milpitas reserves the right to purchase in the open market, or to complete the required work, at the expense of the Contractor, including but not limited to, by recourse to provisions of the performance bond if such bond is required under the conditions of this bid.

SAFETY, FIRST AID REQUIREMENTS. Successful Contractor shall comply with the provisions of California Code of Regulations Section 1502 & 1512, et. seq. regarding safety and first aid kits on site.

TERMS OF THE CONTRACT. The terms of the contract shall be limited to the terms herein unless expressly agreed otherwise in writing by the City of Milpitas.

WARRANTY BY BIDDER. Successful Bidder shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one- (1) year from date of final acceptance by the City of Milpitas. Time is of the essence of this contract. Successful Bidder shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

UNKNOWN OBSTRUCTIONS. Should any unknown obstruction be encountered during the course of this contract the Contractor immediately bring it to the attention of the City of Milpitas. The Contractor shall be responsible for the protection of all existing equipment, furniture, or utilities encountered within the work area.

**SPECIAL PROVISIONS
FOR
MATERIALS & EQUIPMENT
FURNISHED BY CONTRACTOR**

AUTHORIZED DISTRIBUTOR. Successful Bidder must be an Authorized Distributor for the product offered, *or* with his Bid, he must submit documentation from an authorized distributor from whom he has purchased the specified materials or equipment. Said documentation must state that the distributor will honor all manufacturers' warranties.

BRAND NAMES. Manufacturers names, trade names, brand names, model and catalog numbers used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids will be considered for alternative brands that meet or exceed the quality of the specifications listed for any item.

BRAND SUBSTITUTIONS. Bids will be considered on equipment or material complying substantially with specifications, provided each deviation is stated and each substitution is described in detail. Standard catalog sheets or technical data will not be accepted in lieu of this requirement. The City of Milpitas will be the sole determiner of whether such substitutions are equivalent to the materials or equipment specified.

COMPLIANCE WITH LAWS. All bids shall comply with current federal, state, and other laws relative thereto.

COMPLIANCE WITH OSHA. Bidder agrees that all item(s) offered comply with all applicable Federal and the State Occupational Safety and Health Act, laws, standards and regulations, and that Bidder will indemnify and hold the buyer harmless for any failure to so conform.

DEMONSTRATION OF PRODUCT OFFERED. A demonstration of the item(s) offered may be required. If the demonstration cannot be performed at a City of Milpitas facility, the demonstration must be performed within a 60-mile radius of (Agency Location). Bidders shall indicate on their bid the location of the demonstration site. Bids for item(s) that do not perform to the City of Milpitas' satisfaction during the demonstration will be declared non-responsive and will not be considered for award of bid.

F.O.B. POINT & SHIPPING CHARGES. All prices shall be quoted F.O.B. destination, (Agency Location), California. All shipping, handling and freight charges must be shown separately on bid form.

LIQUIDATED DAMAGES. Time is of the essence of this contract. Failure to start and complete all work specified within the time allowed shall constitute material breach of contract. The "time allowed" will be calculated *from the* date of the Notice to Proceed through the "Maximum Completion/Delivery Time" indicated by the Successful Bidder/Contractor on his Bid Form for the completion work or delivery of the goods specified. Failure of successful Bidder to complete the work or deliver the goods within the time allowed will result in damages, and for each consecutive day in excess, the contractor shall pay to the City of Milpitas the sum of **\$250.00** per calendar day. Such amount shall not be construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the contractor if such delay occurs.

MANUFACTURER & MODEL NUMBER. Bidder must state the manufacturer's name and model number of each item proposed.

NEW AND UNUSED. Unless specifically provided to the contrary, all material and equipment shall be new and unused and of the current production year. Bids that are received for other than the current production year or for items and materials that have been previously used will be rejected.

SAFETY STANDARDS. All item(s) offered by the bidder must conform to Safety Orders of the State of California, Division of Industrial Safety.

SAMPLES. For evaluation purposes, samples may be requested from any bidder. Samples shall be provided at no charge unless bidders have indicated on their bids the charge for samples. The City of Milpitas reserves the right to consume samples for testing purposes. The City of Milpitas may retain samples until delivery and acceptance of contracted items. Bidders shall remove samples at their expense within (30) days of request by the City of Milpitas.

TESTING. After delivery, random samples may be submitted to a commercial laboratory, or other inspection Agency, for testing to determine if they conform to the specifications. In cases where tests indicate the samples do not meet specifications, the cost of the testing shall be borne by the contractor. When tests indicate the materials do not meet specifications, the City of Milpitas reserves the right to cancel the award and purchase the goods in the open market at the expense of the vendor.

WARRANTY BY MANUFACTURER(S). Copies or descriptions of all manufacturer(s)'s warranties shall accompany quote for the item(s) proposed. The description(s) shall include the length and scope of the warranties.

WARRANTY BY CONTRACTOR. Successful bidder/contractor shall fully warrant all materials and equipment furnished under the terms of this contract, against poor and inferior quality, for a period of not less than one (1) year from date of the final acceptance by the City of Milpitas. Time is of the essence of this contract. While under warranty, successful bidder shall repair or replace inoperable materials or equipment in a timely manner to minimize the disruption of the City of Milpitas operations.

IMPORTANT NOTICE –

BID DOCUMENTS TO BE RETURNED

The following forms must be completed and submitted on or before bid opening time. Page numbers are noted in parentheses.

- a. **Contractor's Bid Form**
- b. **Proposed Equipment and Material Manufacturers**
- c. **Experience Statement**
- d. **Subcontractors List**
- e. **Bid Security Bond**
- f. **Worker's Compensation Insurance Certificate**
- g. **Bidder's Statement Regarding Insurance Coverage**
- h. **Certificate of Compliance**
- i. **Contractor's Nondiscriminatory Employment Certificate**

Failures to complete, sign (where required), and return the above bid documents with your bid may render it non-responsive.

To: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA, 95035-5411

From: _____
Name of Bidder

Mailing Address

City, State & Zip

The undersigned Bidder agrees he will contract with the City of Milpitas to provide all necessary labor, supervision, machinery, tools, apparatus and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and that he will take in full payment the amount set forth hereon.

Bid No. **IFB 3397** for **Public Access Studio**, in its entirety, all Addenda, and the following documents by this reference are hereby made a part of this contract:

- a. Notice of Invitation For Bids
- b. Detailed Specifications or Scope of Work
- c. Instructions To Bidder
- d. Terms and Conditions
- e. Special Provisions for Equipment & Material Furnished By Contractor
- f. Drawings
- g. Addenda
- h. Non-Collusion Affidavit
- i. Bid Security Bond
- j. Bidder's Statement Regarding Insurance Coverage
- k. Worker's Compensation Insurance Certificate
- l. Bidder's Nondiscriminatory Employment Certificate
- m. Proposed Equipment and Material Manufacturers
- n. Experience Statement
- o. Subcontractors List

Bidder acknowledges receipt of Addenda Number(s) __, __, __, and __.

The cost of all labor, material, and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit price for the various items shown hereon. The City of Milpitas reserves the right to increase or decrease the quantity of any item or omit items as may be deemed necessary, and the same shall in no way affect or make void the contract. When increases or decreases are made, appropriate additions or deductions from the contract total price will be made at the stipulated unit price.

“Award of bid will be made to the lowest responsible and responsive bidder of the Total Base Bid.”

Bonding & Insurance.....\$_____

Total Base Bid (Written in Figures).....\$_____

(Total Base Bid Written in Words) _____

Amount Written in Words. This bid will be awarded based upon the total amount bid **as written in words**. Where there is a discrepancy between words and figures, **WORDS WILL GOVERN**. Where there is a discrepancy between item unit price and extended total, **UNIT PRICE WILL GOVERN**.

Please check your calculations before submitting your bid; the City of Milpitas will not be responsible for Bidder miscalculations.

Maximum Completion or Delivery Time: _____ Days from receipt of order or notice to proceed.

Subcontractor Information. Does this proposal include the use of subcontractors?

Yes _____ No _____ Initials _____

Company Name of Bidder

Mailing Address (PO Box or street)

City, State, and Zip Code

Name of Authorized Representative

Signature

Title

Type of Business (Corp, Partnership, Sole Proprietorship)

Telephone Number

Facsimile Number

PROPOSED EQUIPMENT AND MATERIAL MANUFACTURERS

Bidder shall indicate the name of the manufacturer of the equipment, and supplier of the material, proposed to be furnished under the contract. Awarding of a contract based on this bid will not imply approval by the City of Milpitas of the manufacturers or suppliers listed by the Bidder. No substitution will be permitted after award of contract except upon written approval of the City of Milpitas.

_____ Bid No. IFB 3397
Bidder Name

Equipment or Materials	Manufacturer	Supplier
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXPERIENCE STATEMENT

I hereby certify that I have a current and valid Contractor's License, in good standing, issued by the California State Department of Consumer Affairs and that the information below is a record of my experience in construction of a type similar in magnitude and character to that contemplated under this contract. Additional numbered pages outlining this portion of the bid may be attached to this page.

Bidder Name

Contractor's License Number

Classification _____ applicable to the work.

Expiration Date _____

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____ (date)
at _____, CA.

Signature of Bidder

Description	Yr.	Amt.	Customer & Telephone
_____	___	\$ _____	_____ (____) _____
_____	___	\$ _____	_____ (____) _____
_____	___	\$ _____	_____ (____) _____
_____	___	\$ _____	_____ (____) _____

SUBCONTRACTORS LIST

The following is a list of the subcontractors that will be used in the work if the Bidder is awarded the contract, and no subcontractor doing work in excess of the amount specified in the bid documents, List of Subcontractors, who is not listed will be used without the written approval of the City of Milpitas. Additional numbered pages outlining this portion of the bid may be attached to this page.

NOTE: Subcontractors' address, telephone number, license numbers, class and expiration date information may be omitted from this form but must then be submitted within two (2) working days following the opening of bids. Subcontractor name, address, and item of work must be stated at the time of the bid.

Bidder Name

SUBCONTRACTORS LIST, Page 1 <i>All Subcontractors in excess of 1/2 of 1% of total bid must be listed.</i>		
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ()
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. CLASS:	EXPIRATION DATE: / /	PHONE: ()

BID SECURITY BOND
To Be Completed and Submitted With Bid

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____ hereinafter called Principal, and
(Contractor)

_____ hereinafter called Surety, are
(Surety)

jointly and severally held and firmly bound unto the City of Milpitas, (city), California, hereinafter called City of Milpitas, in the penal sum of ten percent (10%) of the aggregate of the bid of Principal for the work, this sum not to exceed (\$_____) dollars lawful money of the United States, for the payment whereof unto the City of Milpitas, Principal and Surety jointly and severally bind themselves forever firmly by these presents.

WHEREAS, Principal is herewith submitting a bid to: construct a **Public Access Studio in City Hall**

NOW, THEREFORE, the condition of this obligation is such that if Principal is awarded a contract for the work, and if Principal within that time specified in the bid enters into, executes and delivers to the City of Milpitas a contract in the form provided herewith, and if Principal within the time specified in the bid gives to the City of Milpitas the performance bond and the payment bond on the forms provided herewith, then this obligation shall be void.

If, however, Principal shall fail or refuse to furnish, execute, and deliver to the City of Milpitas said performance and payment bonds, and evidence of required liability and worker's compensation insurance in the time stated in the bid, then Principal and Surety shall forfeit to the City of Milpitas the penal sum hereof.

AND IT IS HEREBY DECLARED AND AGREED that Surety shall be liable under this obligation as Principal, and that nothing of any kind or nature whatsoever that will not discharge Principal shall operate as a discharge or a release of liability of Surety.

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of Principal, Surety and the City of Milpitas and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED THIS _____ day of _____, 200____

Name of Principal

Signature of Principal's Authorized Representative

Name and Title of Signer

(Seal and signature of Notary Public)

(Attach notary acknowledgment of Surety)

WORKER'S COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of Bidder (Person, Firm, or Corporation)

Signature of Bidder's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

ATTEST:

By _____
Signature

Title

CERTIFICATE OF COMPLIANCE

To be completed and returned by Successful Bidder with Bonds and Certificates of Insurance

TO: City of Milpitas

RE: _____
Public Access Studio IFB 3397

This is to certify that all requirements for insurance of subcontractors as specified in Bid Number IFB 3397 have been met.

Name of Bidder (Person, Firm, or Corporation)

Signature of Bidder's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

**CONTRACTOR'S
NONDISCRIMINATORY EMPLOYMENT
CERTIFICATE**

Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City of Milpitas and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City of Milpitas for the construction, repair, or improvement of public works.

Contents of Certificate

The Contractor's obligation for nondiscriminatory employment is as follows:

In performing the work of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City of Milpitas setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

3. The Contractor will send to each labor union or representative of workers, with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City of Milpitas advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will permit access to the Contractor's records of employment, employment advertisements, application forms, and other pertinent data and records by the City of Milpitas, the Fair Employment Practices Commission, or any other appropriate Agency of the State designated by the City of Milpitas for the purposes of investigation to ascertain compliance with the Contractor's Obligation for Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.

5. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City of Milpitas as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "non-responsible".

The City of Milpitas shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City of Milpitas shall notify the Contractor that unless he or she demonstrates to the satisfaction of the City of Milpitas within a stated period that the violation has been corrected, he or she shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he or she has implemented remedial measures, satisfactory to the City of Milpitas, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

6. Upon receipt from any person of a complaint of alleged discrimination under any City of Milpitas contract, the City of Milpitas Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City of Milpitas may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City of Milpitas, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such monies shall be recovered from the Contractor. The City of Milpitas may deduct any such penalties from any monies due the Contractor from the City of Milpitas.

7. The Contractor certifies to the City of Milpitas that he or she has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City of Milpitas:

a. The Contractor shall notify all supervisors and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.

b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.

c. The Contractor shall file a basic compliance report as required by the City of Milpitas. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.

d. The Contractor shall notify the City of Milpitas of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.

8. Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City of Milpitas from pursuing any other remedies that may be available at law.

9. The Contractor certifies to the City of Milpitas that the Contractor will comply with the following requirements with regard to all subcontractors and suppliers:

a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.

b. The Contractor will take such action with respect to any subcontract or purchase order as the City of Milpitas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction by the City of Milpitas, the Contractor may request the City of Milpitas to enter into such litigation to protect the interests of the City of Milpitas.

Signature of Bidder's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

PAYMENT BOND
(Civil Code Section 3247)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Milpitas, hereinafter called "City of Milpitas", has awarded to _____ as Principal, hereinafter called "Contractor", a contract for the work described as follows:

Bid No. IFB 3397
To construct a Public Access Studio in City Hall

WHEREAS, Contractor is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law; and

WHEREAS, _____ is hereinafter called "Surety";

NOW, THEREFORE, we, the undersigned Contractor and Surety, are held and firmly bound unto the City of Milpitas in the amount required by law, the sum of:

_____ Dollars (\$_____) (100% of Contract Amount)

for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if said Contractor, its heirs, executors, administrators, successors or assigns; or subcontractors, shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and their subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, that the Surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 to give a right of action to such persons or their assigns in any suit brought upon this bond.

Provided that any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either the Contractor or the Surety hereunder, nor shall any extensions of time granted under the provisions of said contract release either the Contractor or the Surety, and notice of such alterations or extensions of the contract is hereby waived by the Surety.

SIGNED AND SEALED this _____ day of

_____, 200__

Contractor

Seal

By _____
Signature

Seal

Surety

By _____
Signature

Surety's Mailing Address

Surety's Mailing Address

Telephone Number

(Attach Notarized "Acknowledgement of Surety" and "Power of Attorney")

Approved As
To Content:

Signature of City
Purchasing Agent or Attorney

Name & Title

Approved As
To Form:

Signature of City Attorney

Name & Title

In accordance with Public Contract Code §7106, the following Affidavit must be executed by bidder and submitted with bid

"Non-Collusion Affidavit To Be Executed By Bidder And Submitted With Bid

State of California
County of Santa Clara ss.

_____(Bidder's Name), being first duly sworn, deposes and says that he or she is _____(Owner) of _____(Contractor Name) the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not , directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

.

(Date)

(Signed at (Place)

Bidder Name
(Person, Firm, Corp.)

Authorized Representative

Address

Representative's Name

City, State, Zip Code

Representative's Title

SAMPLE CONTRACT

Project: Public Access Studio

Bid No: IFB 3397

Amount of Contract: \$_____

THIS CONTRACT, made this (day of month) day of (month), (year), by and between the City of Milpitas, hereinafter referred to as "the City of Milpitas" and (Name of Contractor), hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

Part A - Invitation For Bids

Part B – Detailed Specifications or Scope of
Work

Part C – Instructions To Bidder

Part D – Terms and Conditions

Part E - Special Provisions for Equipment & Material Furnished By Contractor

Part F – Special Provisions For Services

Part G - Drawings

Part H – Addenda

Part I – Non-Collusion Affidavit

Part J – Bid Security Bond

Part L – Bidder's Statement Regarding
Insurance Coverage

Part M – Worker's Compensation Insurance
Certificate

Part N – Bidder's Nondiscriminatory
Employment Certificate

Part O – Proposed Equipment and Material
Manufacturers

Part P – Experience Statement

Part Q – Subcontractors List

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Proposal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Proposal, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

_____ (Signature)	_____ Contractor's Signature
----------------------	---------------------------------

_____ Name & Title	_____ Name & Title
-----------------------	-----------------------

ATTEST:

By _____ Signature of City Clerk	_____ Name & Title
--	-----------------------

Business Tax Compliance: Certificate No. _____

Approved As
To Content: _____
Signature of City
Purchasing Agent or Attorney

Name & Title

Approved As
To Form: _____
Signature of City Attorney

Name & Title

Approved As
To Insurance: _____
Signature of City Risk Manager

Name & Title

Exhibit A

INSURANCE REQUIREMENTS

A. Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

B. Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

The CONTRACTOR shall furnish satisfactory proof, by certificate or otherwise as may be required, that it has taken out public liability and property damage insurance with insurance carriers satisfactory to the CITY, and in such form as shall be satisfactory to the CITY to protect CONTRACTOR and CITY as an additional insured against loss from liability imposed by law from damages on account of bodily injury, including death resulting there from, suffered or alleged to have been suffered by any person or persons other than employees, resulting directly or indirectly from the performance or execution of this contract or any subcontract thereunder, and also to protect CONTRACTOR and CITY as an additional insured against loss from liability imposed by law for damage to any property caused directly or indirectly by the performance or execution of this contract or any subcontract thereunder, which insurance shall also cover accidents arising out of the use and operation of automobiles and trucks. Said policy shall include, but not be limited to coverage for the omissions and supervisory acts of the CITY, its officers and employees.

Said policy shall also provide that the coverage afforded thereby to CITY, its officers, engineer and consultants, and employees, is primary coverage to the full limit of liability stated in the Declaration, and if the City, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and that CITY, its officers and employees are not precluded from claims thereunder against other insured parties.

C. Comprehensive General and Automobile Liability:

The CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this Agreement comprehensive general and automobile liability insurance protecting Contractor in the amounts of coverage of not less than the limits shown below. Such insurance shall name the City of Milpitas as defined above, and as additional insured. Coverage shall be in accordance with the limits specified above and the provisions indicated herein. Claims-made policies are not acceptable. When umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving CITY at least

thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of CONTRACTOR to notify CITY of such change or cancellation.

General & Automobile Liability -----	\$1,000,000 per person \$1,000,000 for each occurrence
Property Damage -----	\$1,000,000 for each occurrence \$1,000,000 aggregate

Said policies shall have a non-cancellation clause providing that thirty (30) days written notice shall be given the CITY prior to such cancellation. Where the work includes a structure or structures subject to loss or damage by fire, the CONTRACTOR shall maintain or cause to be maintained fire insurance sufficient to protect against such loss or damage in full until the work is accepted by the CITY. Nothing herein contained shall be construed as limiting in any way the extent to which the CONTRACTOR may be held responsible for the payment of damages to persons or property resulting from his or her operations or operations of any subcontractor under him or her.

Proof of all such insurance shall be given by filing certificates of such insurance with the Purchasing Division prior to execution of the contract by the CITY.

D. Certificates of Insurance with Endorsements:

The CONTRACTOR shall file the required original Certificate of Insurance with endorsements prior to the commencement of the work or event; it shall be subject to CITY's approval and shall clearly state:

1. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; Project name and number; policy expiration date; and specific coverage amounts;
2. That thirty (30) days cancellation notice, unqualified as to the acceptance of liability for failure to notify City; and
3. The CONTRACTOR's insurance is primary.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured.
5. CONTRACTOR'S insurance will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage during the life of the contract.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

E. Workers Compensation Insurance:

The CONTRACTOR agrees to obtain and maintain statutory workers compensation and employers liability in an amount not less than One Million Dollars (\$1,000,000) and furnish City with a certificate showing proof of such coverage.

F. Deductibles, Self-Insured Retentions, and Proof of Insurance:

Prior to commencing any work under this Agreement, deductibles and self-insured retentions acceptable to CITY must be stated on Certificates of Insurance, and the Certificate of Insurance must be approved by CITY.

G. Absence of Insurance:

If the CONTRACTOR allows the insurance to laps, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

H. Insurance Companies:

Insurance provided pursuant to this Contract must be from insurance companies admitted in California and rated at least A VII in Best's Insurance Guide; or such other insurance companies as are acceptable to CITY in its sole and unfettered decision.

HOLD HARMLESS

The CONTRACTOR hereby agrees to and shall hold CITY, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's subcontractors, agents, or employee operations under this Agreement, whether such operations by CONTRACTOR or by any of CONTRACTOR's subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's subcontractors during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONTRACTOR for default of this Agreement or arising from the sole active negligence or willful misconduct of the CITY. The City Council may retain so much of the money due to the CONTRACTOR as shall be reasonably necessary to protect the City, until disposition has been made of such suits or claims for damages as aforesaid.

The CONTRACTOR agrees to and shall pay CITY's cost of defense (or, at the sole option of the CITY, CONTRACTOR shall defend with counsel approved by the City Attorney) and indemnify CITY and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (exclusive of any such action brought by CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONTRACTOR'S obligation to indemnify, defend

and save harmless the CITY, as provided for hereinabove, shall in no manner be affected by the fact that the CITY had not received the notice of cancellation prior to the date of such accident or incident.